

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Roy W. Miller,
Claimant Below, Petitioner

v.) **No. 23-214** (Appeal No. 22-ICA-272)
(JCN: 2017004014)

Dynamic Energy, Inc., LWF,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Roy W. Miller appeals the March 6, 2023, decision of the West Virginia Intermediate Court of Appeals (“ICA”) affirming the October 25, 2022, decision of the Workers’ Compensation Board of Review (“Board of Review”). *See Miller v. Dynamic Energy, Inc., LWF*, No. 22-ICA-272, 2023 WL 2364945 (W. Va. Ct. App. Mar. 6, 2023) (memorandum decision). In its decision, the Board of Review affirmed the May 3, 2022, order of the Workers’ Compensation Office of Judges (“Office of Judges”),¹ which upheld the claim administrator’s July 9, 2020, order denying the claimant’s request to reopen the claim to add bilateral carpal tunnel syndrome (“CTS”) as a compensable diagnosis. Respondent Dynamic Energy, Inc., LWF filed a timely response.² The issue on appeal is the claimant’s request to reopen the claim. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the ICA’s decision is appropriate. *See W. Va. R. App. P. 21.*

¹ The Board of Review decided the appeal of an order entered by the Office of Judges on May 3, 2022; this appeal was already pending at the Board of Review on June 30, 2022, when the West Virginia workers’ compensation system underwent a significant restructuring. Despite the restructuring, the Board of Review was responsible for deciding this and “all remaining appeals filed with the Board of Review, of Office of Judges’ decisions issued prior to June 30, 2022[.]” *See W. Va. Code § 23-5-8b(e)*. The order entered by the Board of Review was then appealed to the ICA, which pursuant to West Virginia Code § 23-5-8b(d)(2), has exclusive jurisdiction over all final orders or decisions issued by the Board of Review after June 30, 2022. *See also W. Va. Code § 23-5-15(a)* (directing that prior statutory provisions allowing for appeals from Board of Review directly to Supreme Court of Appeals do not apply to any Board of Review decision issued after June 30, 2022).

² The claimant is represented by counsel James D. McQueen, Jr., and the employer is represented by counsel Steven K. Wellman and James W. Heslep.

The claimant asserts that the claim should be reopened for the development of the record as to whether bilateral CTS should be added as a compensable diagnosis. The employer counters by arguing that the denial of the claimant's reopening request should be affirmed. The employer further argues that the claimant points to no erroneous procedure, no arbitrary or capricious conclusions, and no abuse of discretion or jurisdictional error by the tribunals below.

This Court reviews questions of law de novo, while we accord deference to the lower tribunal's findings of fact unless the findings are clearly wrong. *See* Syl. Pt. 3, *Duff v. Kanawha Cnty. Comm'n*, --- W. Va. ---, 905 S.E.2d 528 (2024). Upon consideration of the record and briefs, we find no reversible error and therefore summarily affirm. *See* W. Va. R. App. P. 21(c).

Affirmed.

ISSUED: October 30, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn